IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

CRP.No. 1190 of 2005()

SM.104/1977 of TALUK LAND BOARD, OTTAPALAM
.....

REVN. PETITIONER:

K.G.MOHANAN, DEVI VILAS,
CHERPULASSERI, REPRESENTED BY POWER OF ATTORNEY HOLDER WIFE, MRS.CHANDRIKA MOHAN, W/O.K.G.MOHANAN, AGED 42 YEARS, DEVI VILAS, CHERPULASSERI, PALAKKAD DISTRICT.

BY ADV. SRI.K.RAMACHANDRAN
SRI.P.RAMACHANDRAN

RESPONDENTS:
---

1. THE TALUK LAND BOARD,
OTTAPPALAM.

2. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. THE TAHSILDAR,
OTTAPPALAM, PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/11/2007, ALONG WITH CRP NO. 266 OF 2006 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON IA 3367/05 in CRP 1190/05

Dismissed.

SD/- M.N.KRISHNAN, JUDGE.

15/11/07

M.N.Krishnan, J.

==========

C.R.P.Nos.1190/05 & 266/06

==========

Dated this the 15th day of November, 2007.

ORDER

C.R.P.No.1190 of 2005 is filed by one of the legal heirs of the original declarant and C.R.P.No.266 of 2006 is filed by the widow of the deceased son of the original declarant and two daughters of the declarant challenging the decision of the Taluk Land Board dated 31.1.2005. By the said order, the Taluk Land Board had directed the declarant to surrender 57.28 acres of land. Learned counsel for the revision petitioners submits before me that as per the original order passed by the Taluk Land Board 2.44 acres were found to be excess land and there was a direction to surrender and it was taken possession of by the Government. Against that decision a Civil Revision Petition was preferred before this Court and this court remanded the matter to the Taluk Land Board which by an order dated 31.3.1981 closed the matter holding that there is no excess land to be

surrendered. Then after almost a decade and according to the Government on 18.9.1991 and according to the declarant on 19.8.1992 the Taluk Land Board reopened the matter most probably invoking the power conferred upon it under Section 85 (9A) of the Kerala Land Reforms Act (hereinafter referred to as "the Act"). Section 85(9A) of the Act was introduced by virtue of the Act of 1989 which fixes a time limit of three years for reopening the matter for the reasons stated in Section 85(9A) of the Act. Therefore, in order to reopen a matter under Section 85 (9A) of the Act, there must be prima facie satisfaction of the materials or one of the materials contemplated in that Section and time limit is only three years.

2. The main grievance of the revision petitioners is that except the widow of the son of the original declarant nobody else was given an individual notice and therefore they were not able to agitate before the Taluk Land Board about the correctness of the reopening of the case. It has to be remembered that a case which has been closed by the Land Tribunal in 1981 is reopened and they have directed them to surrender an extent of 57.28 acres of land. If really there are materials to support reopening

under Section 85(9A) of the Act, opportunity must be given to the parties concerned to put forward their contentions and resist reopening of the case under the Act.

3. The main dispute pertains to the non-possession or non-ownership of many items of property which is proposed to be included in the ceiling case for fixing the ceiling limit of the family. Since the widow of a son and the daughters were deprived of having a personal hearing in the matter and as they have not filed counter statement the Taluk Land Board has proceeded mainly on the basis of the Special Deputy Tahsildar's report to arrive at a decision.

4. I am informed by the learned counsel for the revision petitioners that the Taluk Land Board has not even taken into consideration fully the matters submitted by the Special Deputy Tahsildar regarding the exclusion of land in the case. I am not going into the minute details of each and every survey number and the learned Government Pleader also pointed out to me that there is recital in page 2 of the order which is as follows: "It appears that Smt. K.Bharathi Amma, K.G.Mohan and Valsala have received the notice by hand. I feel that when a matter is

decided which involves the right of the parties, the Taluk Land Board must be sure that notice had been served on the parties and should record that in spite of service of notice, they have not entered appearance. Whatever it may be even if there are laches on the part of the legal representatives, since the stake involved in these cases is very huge that is to an extent of 57 acres, I feel that interest of justice requires that they must be given opportunity to put forward their contentions and to produce documentary and oral evidence in support of their respective contentions and thereafter the Taluk Land Board can decide the matter in accordance with law.

5. Therefore, the order under challenge is set aside and the matter is remitted for the following:

The Taluk Land Board shall give notice of hearing to all concerned by registered post with acknowledgment due and thereafter on appearance of the parties, permit them to file detail counter statement and allow them to produce documentary and oral evidence in support of the their respective contentions and in case of necessity of any report from the Special Deputy Tahsildar under Section 105 of the Act, that may have to be obtained and

thereafter dispose of the matter in accordance with law. I also make it clear that there must be materials available to show that Section 85(9A) of the Act is attracted for reopening the case and further that it has been done within the time stipulated. I further direct the Taluk Land Board to take into consideration the fact that the matter is of the year 1977 onwards and try for expeditious disposal.

Civil Revision Petition is disposed of as accordingly.

M.N.Krishnan,
Judge.

ess 16/11